IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM

ITA No.273/KOL/2023

(Assessment Year: 2020-21)

NatWest Markets Plc 907, Regus, 9th Floor, PS Arcadia, 4A, Abanindra Nath Thakur Sarani, Kolkata, West Bengal-700016 **(Appellant)**	**Vs.**	**Asst. Commissioner of Income Tax** Aaykar Bhavan, 2nd Floor, 110, Shanti Pally, Kolkata, West Bengal 700017 **(Respondent)**

PAN No. AACCT8020E

Assessee by	:	Shri Parcy Pardiwalla, AR
Revenue by	:	Shri Praveen Kishore, DR

Date of hearing: 26.09.2024
Date of pronouncement : 27.11.2024

O R D E R

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the ld. Dispute Resolution Panel (hereinafter referred to as the "Ld. DRP"] dated 21.12.2022 for the AY 2020-21.

02. The only issue pressed at the time of hearing is against the order of the ld. AO passed in accordance with the action of the ld. DRP direction, treating the interest on income tax refund amounting to ₹6,18,50,000/- as income of the assessee / appellant.

03. The facts in brief are that the AO passed the draft assessment order u/s 144C of the Income-tax Act, 1961 (the Act) dated 23.03.2022. The assessee / appellant is a company that is incorporated in the United Kingdom and is a tax resident of the United Kingdom. During

the previous year relevant to A.Y. 2020-21, the assessee carried on its business of banking in India through its branches which it had acquired pursuant to a scheme of amalgamation sanctioned by the Reserve Bank of India (hereinafter referred as 'RBI') whereby the Indian branches of Royal Bank of Scotland N.V. (RBS N.V.) in India were merged into the assessee with effect from 27.02.2017. The ABN Amro Bank, a Netherlands entity, used to carry on banking business in India through its branches situated in India and on the acquisition of the ABN Amro bank by the Roay Bank of Scotland Group its name was changed to the Royal Bank of Scotland NV. This entity used to file its tax returns in India in respect of the profit that were attributable to its activities of the permanent establishment in India as well as in respect of other income which accrued or arose to it in India. Pursuant to an appeal effect order passed for A.Y 2014-15 by the Revenue a refund of income tax of ₹40,07,37,130/-, including interest of ₹9,65,18,062/- in terms of Section 244A of the Act was granted. The said interest refunds were subjected to tax deducted at source of Rs. 96,51,807/- by the Revenue during the A.Y. 2019-20. Similarly, pursuant to certain appeal effect orders passed for various assessment years, the revenue determined a refund of ₹28,21,23,127/-, which included interest of ₹5,21,98,081/- in terms of Sectio 244A on which tax at source was deducted by the Revenue of ₹56,39,097/- in A.Y. 2020-21. Since, the assessee was only entity of the Indian branches that existed on the appointed date i.e. 27.02.2017 that stood vested in the assessee pursuant to merger, the tax that was deducted at source because it was deemed to be income received by the Netherlands entity, was offered to tax as income by that entity in the previous relevant to A.Y. 2019-20. The copy of the acknowledgement income tax return is available at page no.143 of the

Paper Book. The said return disclosed that a sum of ₹9,65,18,062/- was offered to tax in accordance with the Article 11(2) of the Double Taxation Avoidance Agreement entered into between India and Netherland hereafter referred to as DTAA. The tax liability was determined at ₹96,51,807/-. Similarly, for the A.Y. 2020-21, the refund was received by relevant RBS N.V. Netherlands entity i.e. a sum of ₹5,21,98,080/- was offered to tax and the tax thereon was determined in accordance with the Provisions of the Netherlands DTAA at ₹52,91,808/- as per the acknowledgement of income tax return filed by RBS NV/ Netherlands entity is to be found at page 144 of the Paper Book. Both these returns are under processed u/s 143(1) of the Act and accordingly, the assessment on the Netherland Entity for both the assessment years have become final.

04. Since, the assessee had taken over all the bank accounts of the Netherlands Entity with effect from the appointed date, the refund so determined by the Revenue was credited to one such bank account. Accordingly, the appellant/ assessee had credited the interest that was determined by the department to its profit and loss account. However, while filing the return income in its computation for A.Y. 2020-21, sum of ₹5,21,98,000/- was excluded with the explanation "Interest on tax refund" was offered to tax in earlier assessment year. Further, assessee excluded a sum of ₹96,52,000/- towards TDS credit with the explanation "Interest on tax refund" in RBS NV in A.Y. 2019-20. A copy of the computation was available at page 1 of the Paper Book.

05. The AO called for an explanation from the assessee as to why the same was excluded and the assessee in this reply vide letter dated 25.02.2022, explained as to why the interest was not offered to tax. A copy of the said letter is available at page 4 of the Paper Book.

Thereafter, the assessee vide letter dated 14th March, 2022, pointed out that it was only Indian branches that had merged and the Netherlands Entity continued to exist as a separate legal entity and as the interest u/s 244A was a statutory right it would accrue to Netherlands entity only and, therefore, it was rightly offered to tax in the hands of the Netherlands entity. Similarly, the assessee furnished an explanation before the ld. AO as to why it was credited to the books of account of the assessee.

06. The AO passed the draft assessment order on 23rd March, 2022, in terms of Section 144C of the act, where the ld. AO came to the conclusion that income credited to the Profit and Loss account by way of interest was liable to be taxed in the assessee's hands and the assessee has to explain as to why the refund received was not taxable in India. Accordingly, the AO treated the said sum of ₹6,18,50,000/- as an unexplained tax credit u/s 68 of the Act read with section 115BBE of the Act vide order dated 23.03.2022.

07. Being aggrieved by the said order, the assessee had preferred an appeal before the ld. Dispute Resolution Panel and the ld. Dispute Resolution Panel vide its order restored the issue to the file of the ld. AO directing to decide the same after taking into account the contentions of the assessee. The ld. Dispute Resolution Panel while restoring the issue by observing as under:-

> *"4.1.3 The Panel has carefully considered the rival averments as above. The Panel takes a note of the assessee's submission made from page no. 2 to 3 of the Synopsis containing various case laws. The Panel further takes a note of the AO's draft order that the assessing officer has not recorded his observation on the assessee's contention as discussed above. However, the Panel is of the view that the AO has rightly observed that the assessee has to submit a cogent reason to*

explain about the nature of the addition under the consideration being claimed as no taxable income.

In view of above, the AO is directed to consider and verify the assessee's contention in light of submissions made as above before the Panel by passing a speaking and reasoned order within the ambit of law and facts of the case. The Panel hastens to clarify that the AO shall not conduct any fresh inquiry in this regard; the verification shall be made on the basis of documents/submissions available on the records. The assessee's objections made at ground no. 1, in this regard is hereby, disposed off accordingly."

08. The ld. AO thereafter passed the final assessment order u/s 143(3) read with section 144C(13) of the Act dated 27.01.2023, wherein the ld. AO reiterated the finding given by him in the draft assessment order, save and except that he held that interest of ₹6,18,50,000/- could not be added to the assessee's income u/s 68 of the Act but it should be added u/s 56 of the Act as income from other sources and thereafter, applied rate of 40% plus the educational cess and surcharge to bring the said amount under tax. Aggrieved assessee preferred the appeal before the Tribunal against he said final order.

09. The ld. AR vehemently submitted that having regard to the factual scenario as narrated hereinabove it is clear that no part of the interest granted under section 244A of the Act accrued to the assessee as the refund and interest was determined in the case of Netherlands Entity and not to the assessee. The ld. AR submitted that the assessee had taken over all assets and liabilities of the Indian branches that were in existence on 27.02.2017 and any amount which accrued thereafter to the Netherlands entity solely belonged to the Netherlands entity. The ld. AR submitted that the only reason why it was credited to the bank account and reflected in the books of account of the assessee was that because of Indian bank accounts of Netherlands entity that existed on 27.02.2017 vested in the assessee consequent to amalgamation and

accordingly, as the said amount got credited to the profit and loss account. The ld. AR submitted that the said fact was neutralized by the assessee by reducing the same from the income of the assessee while filing the income tax return and copy of which is available in the paper book as stated hereinabove.The ld. AR placed reliance on the judgement of the Hon'ble Apex Court in Sutlej Cotton Mills Ltd. Vs. CIT 116 ITR 1 (SC) and Tuticorin Alkali Chemicals and Fertilizers Limited Vs. CIT 93 Taxmann502 (SC). The ld. AR further contended that the said income have been assessed in the hands of the Netherlands Entity and no corresponding steps were taken to delete or set at naught the assessment so made on the Netherlands entity it is not open to the Revenue to assess the same income in the hands of two different persons and, therefore, for this reason also the addition needs to be deleted. The ld. AR also placed reliance to corroborate his contention on the decision of CIT vs. R Dalmia 135 ITR 346 (Delhi), wherein the court held that where the dividends which were received by the assessee were offered to tax and assessed for the assessment year 1959-60 and the AO intending to tax the same income for A.Y. 1960-61. The court held that the same was already assessed at 1959-60 and it could not be assessed at for A.Y. 1960-61. The ld. AR submitted that since the orders of the income tax authority for earlier year had become final and accordingly, the tax of the same item of income twice in the hands of the same person was not permissible in-law. Undoubtedly in this case the revenue is seeking to tax a different person but in respect of the same item of income. Even if a view is taken that income has to be assessed in the hands of the correct assessee and, hence, it would be open to the revenue to take steps to do so in spite of the fact that it has already assessed another assessee, nevertheless, in the present case the correct person to be

assessed is the Netherlands entity as explained hereinbefore and, hence, the revenue should not be permitted to do so. Even if it is permitted to do so, then, this must be cast with an obligation to rectify the wrong and delete the income which already stands assessed. As the same has not been done it is submitted that the addition of the income in the hands of the appellant cannot be sustained. In the event the Tribunal is pleased to hold that the income has to be assessed in the hands of the Appellant, then, it is submitted that the same can only be assessed at the rate specified in article 12(3)(a) of the UK DTAA (i.e. 10%) and not by applying the rate of 40% as has been done by the Assessing Officer in the final assessment order. In this regard reliance is placed on the order of Special Bench of the Tribunal in CIT vs. Clough Engineering Limited 130 ITD 137 as well as the judgment of the Bombay High Court in DIT vs. Credit Agricole Indozuez 377 ITR 102. In both these decisions the Tribunal/Court has taken the view that the interest earned from the tax department has to be assessed in accordance with Article 11(2) of the relevant DTAA.

010. The ld. DR on the other hand relied heavily on the final assessment order by submitting that the income has been correctly assessed in the hands of the assessee on the basis of credit being given in the bank account of the assessee besides the income tax refund and corresponding entities being accounted in the books of accounts and also in the profit and loss account. The ld. DR submitted that when the interest has been credited in the bank account of the assessee it is obvious and apparent that same has to be assessed in the hands of the assessee and not in the hands of the Netherlands entity which owned and operated all the branches in India till 27.02.2017 when the Indian branches amalgamated with the assessee though the ld. DR

could not duly explain that on the basis of the returns and computation filed a copies of which are available be in the Paper Book, the said income has been assessed in the hands of the Netherlands entity and there is no doubt as to that. The ld. DR finally submitted that the final assessment order may kindly be upheld.

011. After hearing the rival contentions and perusing the materials available on record, the undisputed facts are that the assessee was incorporated in United Kingdom and is a tax resident of the United Kingdom. During the previous year, relevant to A.Y. 2020-21, the assessee carried out its business activities through its branches which had merged in a scheme of amalgamation sanctioned by the RBI. Prior to 27.02.2017, Indian Branches i.e. these branches were owned by R.B.S. N.V. The said foreign entity used to file its return of income in India qua the income that are attributable to the activities of the permanent establishment in India as well as in respect of its income which accrued or rose in India. While giving appeal effect for A.Y. 2014-15, the Revenue determines that the tax refund of ₹40,76,1390/- which is included in interest of ₹9,65,18,062/- u/s 244A of the Act of which tax at source of ₹96,51,807/- was directed by the revenue during the previous year relevant to A.Y. 2019-20. Similarly, pursuant to certain appeal effect orders passed for various assessment years, the revenue determined a refund of ₹28,21,23,127/-, which included interest of ₹5,21,98,081/- in terms of Sectio 244A on which tax at source was directed by the Revenue of ₹56,39,097/- in A.Y. 2020-21. We note that the Netherland entity had offered to tax the interest income u/s 244A of the Act in the previous year relevant to A.Y. 2019-20 and copy of acknowledgement of ITR is available at page no.143, wherein interest of ₹9,65,18,062/- offered to tax and in accordance with the Article 11(2) of the Double Taxation

Aviance Agreement entering into between India and Netherland, tax liability was determined at ₹96,51,807/-. Similarly in A.Y. 2020-21 refund was actually received by RBS. N.V. Netherla nds entity and interest thereon of Rs. 5,21,98,080/- was offered to tax and tax was determined in accordance with the above DTAA at ₹52,91,808/- and the copy is available at page no.144 of the Paper Book, where it is noted that both the returns of income were processed u/s 143(1) of the Act and accordingly, the assessment in respect of Netherland entity in both the assessment years has become final. Now, mere fact that the refund as well as interest was credited in the bank account of the assessee post amalgamation would not decide the nature of the receipt in the hands of the assessee . In our opinion, it is a unequivocal and settled position that the same income cannot be taxed twice first in the hands of the same assessee and secondly hands of some different assessee. In the present case, the income has been assessed in the hand of Netherlands entity and therefore it is not open to the Revenue to assess the same income in the hands of two different persons. Therefore, for this reason also the addition has to be deleted. The ld. AR also placed reliance to corroborate his contention on the decision of *R Dalmia (supra)* and similarly, in in Sutlej Cotton Mills Ltd. Vs. CIT 116 ITR 1 (SC) and Tuticorin Alkali Chemicals and Fertilizers Limited Vs. CIT 93 Taxmann502 (SC) Hon'ble Apex Court held that the entries in the books of accounts would not establish the taxability of the receipt. Considering the above fact, we are inclined to hold that the interest credited in the bank account of the assessee which is in respect of Indian branch which were belonging to Netherland Entity prior to 27.02.2017, is not taxable in the hands of assessee as the same has been assessed in the hands of Netherlands Entity by the department and the

assessment has attained its finality. The appeal of the assessee is allowed.

012. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 27.11.2024.

Sd/-	Sd/-
(PRADIP KUMAR CHOUBEY)	(RAJESH KUMAR)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Kolkata, Dated: 27.11.2024
Sudip Sarkar, Sr.PS
Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata